

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RUSSELL SCOTT FARIA,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No 4:16-CV-01175-JAR
SERGEANT RYAN J. MCCARRICK, et al.,)	
)	
)	
Defendants.)	

**MOTION OF DEFENDANTS RYAN MCCARRICK,
MICHAEL MERKEL, AND PATRICK HARNEY TO DISMISS**

Pursuant to F. R. Civ. P. 8 (a) (2) and 12 (b) (6), defendants Ryan McCarrick, Michael Merkel, and Patrick Harney move this Court for an order dismissing plaintiff's amended complaint. As grounds for this motion, defendants state the following:

The Entire Complaint

1. The amended complaint in the case at bar is 83 pages long, consisting of 532 paragraphs, many of which contain multiple subparagraphs. In addition, the amended complaint contains 48 footnotes with case citations and legal arguments.
2. Rule 8(a)(2) provides that a pleading stating a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief...."
3. Because the amended complaint filed on September 15, 2016 in the case at bar contains neither a short nor plain statement of plaintiff's claim showing that plaintiff is entitled to relief, it

violates Rule 8(a), and should be dismissed in its entirety without prejudice, with leave to file a second amended complaint that complies with the Rule 8(a).

Count V of the Amended Complaint

4. The allegations set forth in Count V of the amended complaint fail to state a claim upon which relief can be granted because the Eighth Circuit does not recognize a cause of action for malicious prosecution pursuant to 42 USC § 1983. Therefore, Count V should be dismissed. F.R.Civ.P. 12(b)(6).

Wherefore, defendants Ryan McCarrick, Michael Merkel, and Patrick Harney pray this Court enter an order dismissing plaintiff's amended complaint in its entirety pursuant to Rule 8(a) with leave to file a second amended complaint as to the claims set forth in Counts I, II, III, and IV that complies with the foregoing rule. Because the claim in Count V fails to state a claim upon which relief can be granted, the Court should dismiss Count V pursuant to Rule 12(b)(6).

Respectfully submitted,

KING, KREHBIEL & HELLMICH, LLC

By: /s/ Robert J. Krehbiel
ROBERT J. KREHBIEL #28616MO
2000 South Hanley Road
St. Louis, MO 63144-1524
Phone: (314) 646-1110
FAX: (314) 646-1122
E-Mail: rkrehbiel@kkhbb.com

Attorneys for Defendants McCarrick, Merkel, and Harney

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2016 a true and accurate copy of the foregoing was filed electronically using the Court's e-filing system, which sent notification of the filing to: All Counsel of Record.

/s/Robert J. Krehbiel